

Exhibit C

1 STATE OF NEW YORK
2 COUNTY OF ONONDAGA : SUPREME COURT

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4 **BLACKHAWK TACTICAL SECURITY SERVICES, LLC,**
5 Plaintiff,

6 - against -

7 **SYRACUSE CENTER, LLC,**
8 Defendant.

9 INDEX #2017-EF-254
10 RJI #33-17-0727
11 -----

12 Motion Decision
13 June 29, 2017

14 Onondaga County Courthouse
15 401 Montgomery Street
16 Syracuse, NY 13202

17 BEFORE:

18 HONORABLE GREGORY R. GILBERT,
19 SUPREME COURT JUSTICE

20 APPEARANCES:

21 THE LAW OFFICE OF FRANCIS E. HUNT, JR., PLLC
22 250 Harrison Street
23 Syracuse, NY 13202
24 Attorney for Plaintiff

25 PEYROT & ASSOCIATES
62 William Street, 8th Floor
New York, NY 10005
BY: DAVID VAN LEEUWEN, ESQ.
Attorney for Defendant

1 THE COURT: On the record, please. This is a
2 motion to dismiss plaintiff's complaint based on
3 documentary evidence and failure to state a cause of
4 action. The defendant also seeks to cancel a notice
5 of pendency and to discharge a mechanic's lien.

6 Plaintiff's first cause of action under a
7 service agreement of December 31, 2013, is dismissed
8 based on the agreement entered into March 9, 2016.

9 Plaintiff's third cause of action, to the
10 effect that it is entitled to a lis pendens, is
11 dismissed. It fails to state a cause of action. The
12 lis pendens is cancelled. Any contract claim
13 possessed by this plaintiff does not affect the
14 title, use or enjoyment of the real property at
15 issue, as required by CPLR Section 6501.

16 Plaintiff's fourth cause of action for account
17 stated is dismissed. The statements of account
18 referenced by the complainant are for services
19 pre-dating the March 9, 2016 agreement.

20 Plaintiff's fifth cause of action for unjust
21 enrichment is dismissed. There is no dispute as to
22 the existence of the March 9, 2016 contract. The
23 complaint attaches and makes a claim based on it.
24 Defendant attaches a copy as documentary evidence
25 upon which dismissal is sought.

1 This leaves plaintiff's second cause of action.
2 The motion to dismiss is denied. The March 9, 2016
3 agreement required plaintiff to "immediately cancel
4 the mechanic's lien" but also provided that plaintiff
5 "may re-file the mechanic's lien if the terms in this
6 agreement are not upheld by" defendant.

7 The agreement quite clearly states that the
8 property was to be sold, and it was not sold. And
9 according to the responding papers, it is not even
10 listed for sale and it has been withdrawn from the
11 market due to some attachment problems pending down
12 in the Southern District of New York that they are
13 attempting to resolve.

14 Assuming these allegations as true for the
15 purpose of a motion to dismiss, the complaint states
16 a claim upon which relief maybe granted and the
17 mechanic's lien would have been properly re-filed.

18 The motion to discharge the mechanic's lien is
19 denied on the same basis. Re-filing was allowed by
20 the March 9, 2016 agreement.

21 Mr. VanLeeuwen, I will ask you prepare the
22 order on notice, and attach the minutes of today
23 thereto. I appreciate your time this morning,
24 gentlemen. I hope you have a nice weekend.

25 MR. VAN LEEUWEN: I am not familiar with the

1 court procedure. Should I get a copy of the
2 transcript?

3 THE COURT: If you give her your information.
4 You may approach and make those arrangements with
5 her.

6 * * *

7 CERTIFICATE: I do hereby certify that I am a Senior Court
8 Reporter with the Fifth Judicial District; that I attended
9 and reported the above-entitled proceeding; that I have
10 compared the foregoing with my original minutes and that it
11 is a true and accurate transcript thereof and of all the
12 proceedings had therein.

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15 _____
16 Jamie L. Pacheco 07-03-17
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JAMIE L. PACHECO, RMR, SENIOR COURT REPORTER